Communiqué

JANUARY, 2003

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PRESIDENT'S REPORT

Lori T. Spivak
President

The year 2002 marked the 125th anniversary of The Law Society of Manitoba. A dinner celebrating this milestone was held on October 24, 2002. Eight Manitoba lawyers whose distinguished careers recently passed the half-century mark were honoured along with Harold Stubbs Q.C. who served as secretary to the Law Society from 1958 to 1980. Professor Trevor Anderson, our distinguished "keeper of the chronicles", provided a scholarly reflection of our history.

The history of the Law Society of Manitoba is of men and women and their devotion to public service, of stewardship of the law and the public interest, of growth and development in the face of new challenges and of the continued effort to preserve the independence of the legal profession. Since its establishment in 1877 with a handful of lawyers, the Society has evolved to one comprisir approximately 1800 lawyers of very diverse backgrounds. This rich mixture - a reflection of Manitoba life - has produced many talented and dedicated practitioners who have contributed

significantly to the evolution of the practice of law in Manitoba and magnificently to the political, cultural and economic life of our province. It is an impressive history to commemorate.

Looking to the future there is change and challenge on the horizon.

Effective October 31, 2002, The Legal Professions Act replaced The Law Society Act and the Benchers passed new rules which came into effect at the same time. There are fewer rules which reflects the progress made in streamlining our governance infrastructure.

We are involved in an exciting project with Alberta and Saskatchewan to develop a common skills based Bar Admission Course using modern distance education tools. This joint venture is aimed at improving the quality and relevance of the Bar Admission Course while at the same time reducing the cost of its delivery. Sheila Redel, Director of Education, has been seconded to the project for tw years.

At the last Benchers meeting, in considering a Legal Studies Monitoring Report from Allan Finebli there was a lengthy discussion about the fact that the last few years have seen a significant drop in the number of Bar Admission Course students. The concern is that this may be a long-term problen and potentially have an impact on the availability of legal services to the public at a reasonable cost The problem is multi-faceted and it was agreed that the Law Society should be actively involved in addressing this issue.

The future of libraries is also an important issue that we will be facing in the future and will be considered in detail at a Benchers retreat in March. Under our agreement with the Government of Manitoba, the Law Society will assume full responsibility for the cost of Libraries in 2004. We therefore need to consider what form of library we want, how much our members would be willing to pay for this service, how important is public access and the most effective and efficient way to deliver library services outside of Winnipeg.

In my last report I told you about the strides we were making on the issue of national mobility. I an pleased to report that on December 7, 2002 in Toronto, representatives of eight law societies signec the National Mobility Agreement. The signatories were the Law Societies of Alberta , British Columbia, Saskatchewan, Manitoba, Newfoundland, the Nova Scotia Barristers Society, and the La Society of Upper Canada. The Barreau du Quebec also signed the agreement although as a civil jurisdiction different criteria will apply. The provisions of this mobility agreement will not come in effect in Manitoba until rules have been approved by the Benchers. The agreement is reciprocal anc comes into effect in each signatory jurisdiction once that jurisdiction passes the necessary rule changes.

May you all have a happy and fulfilling new year.

Benchers' Meeting: A Hair Raising Experience

Allan Fineblit, Q.C.
Chief Executive Officer

The Benchers of the Law Society of Manitoba met on December 19, 2002. Every couple of years a

theme emerges that inspires the Benchers to make really bad puns (some of you will remember the barnyard animals theme from Barney Christianson's term as President). At the December 19, 2002 meeting, for some unknown reason, hair references sprung up everywhere (in hindsight, maybe I shouldn't have offered a big prize for the best one!).

Anyway, Vice-President **Patrick Riley** found an excuse to quote Bugs Bunny "hair today, gone tomorrow", **Rob Kozak** called someone the "hair apparent", **Garth Smorang** found occasion to "split hairs" and **Bill Gange** proposed several "hairbrained ideas". **Pat Fraser** looked like a sure winner when she asked a "fringe question", until **Jeff Hirsch**, whose only contribution up to that point was to make fun of Bill Johnston's new beard, produced a doctored photo of the CEO to steal the big prize.

In spite of the hilarity, a remarkable amount of serious business was actually conducted. President **Lori Spivak** reported that a **national mobility agreement** was signed on December 7th that will dramatically expand mobility of lawyers across Canada among provinces that pass the appropriate rules (we expect that to happen here in May or June).

Benchers approved, in principle, rules that will facilitate **limited liability partnerships** of lawyers Manitoba. The rules will be passed in final form in February and will take effect as soon as amendments to The Partnership Act and The Business Names Registration Act are proclaimed (our best guess is this spring).

Amendments to the Code of Professional Conduct were also approved in principle to make the language of the Code consistent with the new Legal Profession Act and corresponding revisions to the rules that were passed under the Act.

Benchers considered a Legal Studies Monitoring Report. The report looked at the financial challenges flowing from a very low grant from the Manitoba Law Foundation (resulting from low interest rates); described the progress towards a skills-based Bar Admission Course for the three prairie provinces; and considered issues relating to the retention and recruitment of articling studen in particular for rural and northern Manitoba. Benchers decided that the Law Society should take ar active role in ensuring the public continues to have legal services reasonably available to them wherever they live in Manitoba.

Deputy CEO **Marilyn Billinkoff** presented a report on a number of conveyancing initiatives currently underway. **Herb Peters** is the new Chair of the Western Law Societies Conveyancing Committee and **David Golub** continues as a Manitoba representative on that committee. Marilyn also reported that a study on the regulation of title insurers is underway by the Alberta Law Reform Institute and a possible parallel study is being considered by the Manitoba Law Reform Commissio The Western Conveyancing Protocol continues to make slow, steady progress with lenders. Both CMHC and GE Capital Canada have confirmed acceptance of protocol closings across western Canada. In Manitoba, Credit Union Central has now approved protocol closings in connection with both insured and conventional mortgages. The Canadian Western Bank, Investors Group and Lond Life have all approved the use of protocol closings across western Canada for insured and conventional mortgages.

Finally, Marilyn reported on developments in British Columbia flowing from a major defalcation (estimated to be in the $30-$50 million range) facilitated by a lawyer named Martin Wirick. The La Society of British Columbia considered but rejected a number of options (including a two cheque system) and now seems to be focussing on a transparency option that places an onus on the vendor'

lawyer to provide proof that the sale proceeds have been used to pay out the obligations on title, an also on replacing the discretionary reimbursement fund with a kind of fraudulent lawyers insurance funded primarily by a transaction fee. We are keeping in close touch with our friends in British Columbia who are very respectful of the impact their decisions might have on their western-Canadian colleagues.

Benchers decided to hold a full-day meeting in March to discuss the future of courthouse libraries. about a year virtually all government funding for courthouse libraries will disappear and we will either have to find new and innovative ways to deliver library services or ask the legal profession t dig much deeper into their own pockets to maintain the current system of courthouse libraries.

Sherron Dickson, President of the Federation of Law Societies of Canada, addressed the Benchers about a number of Federation activities on the national and international front, including efforts to facilitate international mobility, and litigation and lobbying initiatives to preserve the historic right of clients in dealing with their lawyers. Sherron also described the Federation's plans to restructure its Board into a more representative and effective body. Benchers voted to make Ms Dickson an Honourary Member of the Law Society of Manitoba, which particularly pleased Sherron who practises in New Brunswick but remains a Manitoban at heart (some of you may remember her as a class of '77 graduate of our Law School).

Finally, Benchers extended good wishes for a speedy recovery to friend and fellow Bencher **Randy McNicol**.

Following the Benchers meeting, we joined the Manitoba Bar Council for a joint meeting. Law Society President **Lori Spivak** spoke about mobility and Legal Aid funding, and Manitoba Bar President **Brian Midwinter** talked about initiatives to improve the image of lawyers and the work the Bar's Future of Law Committee.

National Conference Shines Spotlight on Equity and Diversity in Canada's Legal Profession

Brenlee Carrington Trepel
Equity Ombudsperson

Equity was front and centre recently when the Law Society of Upper Canada hosted a national conference called "Promoting Dialogue, Creating Change: Equity and Diversity in the Legal Profession."

More than 60 delegates from across Canada, including Law Society of Manitoba Deputy CEO Marilyn Billinkoff and myself, converged at Osgoode Hall in downtown Toronto to exchange ideas about how to make our professi more inclusive and respectful of all people.

Some fascinating insights came out of the three-day event, and I want to share a few of them with you.

Professor James (Sa'ke'j) Youngblood Henderson, Research Director of the Native Law Centre of Canada located at the College of Law, University of Saskatchewan, said that ours should be a profession of "respect instead of power, of dignity instead of oppression."

One wise person observed that "A legal profession that promotes equality within its own ranks will better protect equality in greater society."

It was noted that it was not until the 1970s that the Law Society of Upper Canada had its first Jewis treasurer, and not until the 1980s that it had its first woman treasurer.

We were cautioned that residential school survivors have, at times, been revictimized by lawyers who have taken advantage of them.

One delegate urged people to think about how determinative the Law School Admission Test really is. She advocated an admission process that would look at the whole person instead of just at the person's scores.

Charles Smith, one of the driving forces behind the conference and the CBA's Equality Advisor, sa that we all should realize that we live with multiplicity, not uniformity, and that we should shift the onus for achieving equality from the individual to the institution.

T. Brettel Dawson, of the National Judicial Institute, spoke about the importance of social context education. In one of Dawson's papers, she quoted The Honourable Claire L'Heureux-Dube: "Wher issues are examined in context, it becomes clear that some so-called 'objective truths' may only be the reality of a select group in society and may, in fact, be completely inadequate to deal with the reality of other groups."

Law Professor Diana Majury of Carleton University in Ottawa stated that: "Lesbians and gays have been historically disadvantaged, stigmatized, stereotyped, feared, marginalized, ignored and hated." She added that transgendered people also experience discrimination. She said that "Overwhelming heterosexualism is omnipresent and unrelenting. It is alienating and silencing and tiresome." She sa that the legal profession must move beyond non-discrimination and tolerance to anti-discrimination and pride.

Jeanne Byron, Equity Ombudsperson at the Law Society of Alberta, stated that the flip side of complaints to ombudspeople is using education as a means of preventing discrimination and harassment.

Naomi Overend of the Ontario Human Rights Commission spoke of her experiences as a mobility impaired lawyer. She said that people are disabled by their social environment. She stated that peop with disabilities experience exclusion from participating because of the physical environment and because of stereotypes about supposed limitations and abilities rather than being seen as individuals with unlimited potential. She added that inaccessible environments are a barrier to equality. She wo a case in the Supreme Court of Canada earlier this year, and says she was one of the first women in wheelchair to have appeared as counsel at the SCC. She found that the women's robing room is in a inaccessible location at the SCC. She urged the legal profession to take a leadership role in making its buildings accessible to all.

Judge Therese Alexander of the Provincial Court of British Columbia observed: " ...What is important, however, is not to judge with hindsight the actions of previous generations, but rather to

learn the lessons of our history and to remain vigilant; to recognize that though law can be used as a tool of repression and inequality, it can also provide a framework for change, recognition and protection of the equality and freedoms that have come to represent our notion of a civilized and modern society."

We all left the conference with a strong resolve to meet again next year and to include more delegates from as many different areas as possible.

Do you feel that you may be experiencing discrimination or harassment? Would you like to consult with me confidentially on any difficulties you or your office may be experiencing? A call to the Equity Ombudsperson is strictly confidential. It's not a call to The Law Society. All services are provided free of charge for lawyers, support staff of legal employers, articling students and clients of the legal profession.

The Equity Ombudsperson can assist to resolve individual discrimination and harassment concerns act as a sounding board in dealing with internal office concerns or complaints; provide educational seminars and speaking engagements about respectful workplace issues for legal offices; assist in the development and implementation of policies and procedures. Contact Brenlee Carrington Trepel confidentially by phone: 942-2002 or toll-free 1-866-771-2002; email: brenleecarrington@shaw.ca fax: 474-1161; mail: P.O. Box 2555-Station Main, Winnipeg, Manitoba, R3C 4B3. You can also visit our equity initiatives site at www.lawsociety.mb.ca.

Allan's Odds and Ends

- You are going to get a form in the next while and I want you to fill it out and send it back to me. It will help us update our database and also asks for your advice on a few key policy issu that are hot topics on upcoming Bencher agendas.
- The final set of regulations for the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* took effect on January 6, 2003. Lawyers are not exempt from these regulation which require reporting of certain cross-border transactions over $10,000, but the Attorney General of Canada and Finance Canada have confirmed that the "exporter" required to report under the new regulations is the client and not the lawyer. Also, lawyers remain exempt from Part I of the PCMLTA (the obligation to report and record suspicious and large cash transactions, and to implement the compliance regime). There are several very good websites can recommend with more information on the issue, including: http://canada.gc.ca/gazette/part2/pdf/g2-136x15.pdf and http://www.practicepro.ca/practice/mlnotice.asp.
- Check your wallet. It should contain a Blue Cross card that entitles you to use the Lawyers A Risk program free of charge. Blue Cross provides confidential counselling and 24-hour crisis assistance anywhere in Manitoba. If you can't find your card or never got one, contact Molly Morris at 926-2018.
- I have a copy of the "Charter of The Rights of A Client" sent to me by the Tyrolian Bar Association, Austria, published on the occasion of their 150th anniversary. I would be happy to send a copy to anyone who would like to see it.
- Congrats to Ellie Turner, Deny Maric, Bill Dunn and Edgar Schmidt, who all claimed to hav won the "find a typo in Communiqué" challenge I issued last month. Ellie was the only one t find a legitimate typo (the others advanced obscure points of grammar that only demonstrate

how desperately they coveted the valuable prize).

Membership Changes

The following members have voluntarily changed their status as indicated on the dates shown:

Non-Practising to Practising:
September 1, 2002 - Amy R. Gough Farnworth
September 17, 2002 - Jody D. Hecht
November 1, 2002 - Eveyln M. Braun
November 19, 2002 - G. Carter Cottam

Inactive to Practising:
September 1, 2002 - Todd W. Thomson
September 1, 2002 - K. Rhodel Ferris
September 1, 2002 - Pierrette Hebert
September 1, 2002 - Keith C. Eyrikson
September 18, 2002 - Nadine S. Silverman
October 1, 2002 - Carolyn M. Moir
October 2, 2002 - Renee D. Szewczyk
October 15, 2002 - Janet L.J. Mayor
November 1, 2002 - Mary-Jane Bennett
November 1, 2002 - Michelle Laham Szutiak
November 18, 2002 - Rodney E. Shannon
November 18, 2002 - Michael A. Choiselat
November 25, 2002 - Teruel A. Carrasco
December 2, 2002 - Anne B. McGarry
December 2, 2002 - Jay L. Funke
January 1, 2003 - Peter S. Morse
January 1, 2003 - Patti-Anne L. Umperville
January 1, 2003 - Ronald P. Toews

Practising to Non-Practising:
October 4, 2002 - Suzanne M. Harbottle
October 18, 2002 - Robert T. Malech
October 18, 2002 - Laurent J. Roy
December 1, 2002 - Evelyn M. Braun

Practising to Inactive:
August 2, 2002 - B. Jean McBride
September 13, 2002 - Melanie N. Hawkes Kavanagh
September 10, 2002 - Leah F. Craven
September 17, 2002 - Carrie D. Ritchot
September 23, 2002 - Jean-Paul J. Boily
October 1, 2002 - Marcy T. Zlotnick
October 9, 2002 - Dorothy D. Tanaka
October 25, 2002 - Jeffrey C. Johns

November 1, 2002 - Joan M. Holmstrom
November 27, 2002 - Georgina A. Garrett
December 1, 2002 - Bradley Y. Minuk
December 4, 2002 - Terrance H. MacKean
January 1, 2003 - Arnold A. Goodman
January 1, 2003 - Louise M. Dowhan-Bertouille
January 1, 2003 - William E. Doyle

In Memoriam

Edward Rodin, who passed on September 23, 2002 at the age of 81. Mr. Rodin received his call to the Bar on October 28, 1955. He was a practising member of the Law Society of British Columbia at the time of his call. Mr. Rodin was employed with the Attorney General's Department for 45 years until his retirement in 1991.

Shelley Michele Weiss, who passed away on September 10, 2002 at the age of 47. Ms. Weiss received her call to the Bar on June 26, 1980. Upon receiving her call, Ms. Weiss joined the firm then known as Taylor Brazzell McCaffrey where she practised law for five years. In 1985, Ms. Weiss moved to Toronto and in 1986 obtained her call to the Law Society of Upper Canada. She was employed for 16 years with the Bank of Montreal. At the time of her death, Ms Weiss was the Managing Director, Investment & Corporate Banking with BMO Nesbitt Burns.

Robert Elmer Moffat, who passed away on November 3, 2002 at the age of 86. Mr. Moffat received his call to the Bar on May 31, 1952 and was a practising member of the Law Society until his retirement in 1981. Mr. Moffat also received a degree in economics. Mr. Moffat worked as a senior economist with the Canadian Wartime Price Control Agency, as an economic advisor to the Premier of Manitoba, as an alderman for the City of Winnipeg, and for the last 15 years of his career as Corporate Secretary and Manager of Manitoba Pool Elevators.

Donald Kerry Hrabinsky, who passed away on November 5, 2002 at the age of 36. Mr. Hrabinsky received his call to the Bar on June 25, 1992. In 1987 he obtained a Bachelor of Science degree. Mr. Hrabinsky practised tax and securities law, first with Thompson Dorfman Sweatman and then with Fillmore Riley. He was course head and lecturer for the tax segment of the Law Society's Bar Admission Course and was also a frequent CLE presenter. Mr. Hrabinsky was also an instructor at the University of Manitoba Law School. He served on numerous community organizations, including the Winnipeg Humane Society (as President) and Board Member of the Misericordia Health Centre and the Rainbow Society.

Rhys William Jones, who passed away on November 8, 2002 at the age of 52. Mr. Jones received his call to the Ontario Bar in 1982 and his call to the Manitoba Bar on February 13, 1989. He practised law with several Manitoba firms, including Booth Dennehy Ernst & Kelsch, Lofchick Jones & Associates, and Jones & Associates. In September, 2000 Mr. Jones was presented with a Meritorious Service Medal in recognition of his work on behalf of aboriginal communities.

Julius (Julian) Rudolph Glowacki, Q.C., who passed away on November 9, 2002 at the age of 81. Following four years of active service with the Royal Canadian Navy, Mr. Glowacki attended the Manitoba Law School, as an honours student, and received his call to the Bar on February 5, 1952.

He practised law with the firm Dubienski & Dubienski for nine years and then started his own practise, under the firm name of Glowacki & Libitka where he remained senior member of the firm until his retirement in 1992. In March of 1977 Mr. Glowacki was appointed a part-time Provincial Court Judge and in December, 1984 he was appointed Queen's Counsel. Mr. Glowacki served as a Bencher of the Law Society from 1984 to 1988. He was an active member of Winnipeg's Polish community, was involved with the Winnipeg North Liberal Association, and was also an avid outdoorsman.

Laurent Joseph Roy, Q.C., who passed away on November 25, 2002 at the age of 59. Mr. Roy received his call to the Bar on September 15, 1967. Mr. Roy began his law career with the firm Grafton Deniset. In 1970 he joined the firm Monk Goodwin, where he remained until his death. Mr Roy served on the Boards of numerous francophone organizations, including Founding President o Francofonds, School Trustee and Vice-Chair of the Saint-Boniface School Division and President c l'Association des anciens and of l'Oeuvre des bourses de Collège universitaire de Saint-Boniface. I also served as President of l'Institute Joseph-Dubuc and of the Association des juristes d'expressio française. Mr. Roy was a strong advocate of French language rights. He appeared before the Supreme Court of Canada seven times on constitutional rights issues. For his contributions he received a Federal Queen's Counsel appointment.

David Proctor, who passed away on November 28, 2002 at the age of 82. Mr. Proctor received his call to the Bar on May 27, 1950. He began his legal career with the firm Pitblado & Hoskin and remained there until his retirement in 1990. Prior to obtaining his law degree, Mr. Proctor signed o as a member of the Regimental Pipe Band of the 1st Battalion of the Queen's Own Cameron Highlanders of Canada in 1939 and served in England, Scotland and Normandy.

Stanley Noel Udow, who passed away on November 28, 2002 at the age of 71. Mr. Udow received his call to the Bar on May 30, 1956. Mr. Udow was a partner in several law firms, including Udow Urbanowski, Udow and Company, and Rosenbaum Potkonjak & Udow, and practised law in Winnipeg, Stonewall, The Pas and Gimli.

Law Society of Manitoba 125th Anniversary Dinner

Happy New Year from the C.E.O.

I don't like change. When Arne Peltz told me he was leaving the Public Interest Law Centre it kept me awake for days. I especially don't like bad change. By that measure, 2002 was an awful year. Colleagues died too young, more friends got sick than got better, the economy faltered and the wor is in a mess. I know nothing is forever (even Diamond & Adleman went their separate ways in 200 but in my little world it started to feel like there was only bad news. So…I decided to make a list of ten "things" that put a smile on my face in 2002. Here's my list:

1. Ever the optimist, my old pal Gil Clifford got married again;
2. We celebrated our 125th anniversary as a Law Society in 2002 and took the occasion to honour eight lawyers who had been practising for 50 years or more. If you don't like change, you're in the right business;
3. Westjet Airlines. They seem to have the radical view that air travel doesn't have to be an

ordeal;
4. Grant Nerbis made a triumphant return from the hospital to the hockey rink;
5. There were some truly wonderful judicial appointments in 2002 that wowed even the most cynical court watchers;
6. Someone told me that Robert Buternowsky has four kids under two. It may not always feel that way, but he's a lucky man;
7. You paid the Law Society less money again last year for the fifth year in a row (okay, this is just bragging but it's undoubtedly the last time it's going to happen for a while, so I'm milkir it for all it's worth);
8. The tomato basil soup at Soup Sandwiches & More (the ultimate cheap thrill);
9. A national mobility agreement was signed in December that will make it a lot easier for clien and lawyers to get their work done;
10. I can think of at least a hundred lawyers who made me smile or laugh last year. Here are the first dozen names that come to mind: Stu Pierce, John Combs, Lavonne Ross, Dave Negus, Bob Goodwin, Jake Harms, Lore Mirwaldt, Jim Parrott, Catherine Tolton, Dale Schille, Walt Saranchuk, Denyse Côté…

Sending Money

Tana Christianson
Director of Insurance

Canadian lawyers are sometimes put in situations where they have to send trust funds outside of Canada. It can be a surprisingly difficult endeavour to transmit funds in foreign currency.

One law firm sent a firm trust cheque to the U.S., only to have it treated as having been drawn in U.S. dollars rather than Canadian funds. This resulted in a trust shortfall and temporary chaos in the Estate.

Another firm was sending Estate funds to a beneficiary who was a Korean resident. The law firm sent a bank draft in the currency of the beneficiary's jurisdiction and mailed it. The bank draft neve arrived. Since bank drafts cannot be cancelled, the bank would not issue a new draft without funds sufficient to cover both the lost draft and the re-issued draft. Once a bank draft is issued, the monie immediately come out of the sender's bank account as opposed to cheques, where monies do not come out of the senders bank account until the cheque clears. Ultimately, this was resolved with an indemnification being provided by the Claims Fund to the Bank for the amount of the replacement bank draft.

Recent amendments to the Rules on trust accounting (Rule 5-43(1)(b)) allow law firms authorized l the Chief Executive Officer of the Law Society to make wire transfers of trust funds; if you have appropriate systems in place, Allan Fineblit will let you wire money. However, there is something you should know - wire transfers are not always all they are cracked up to be. This past year, the Professional Liability Claims Fund had to send $10,000.00 in U.S. funds to a law firm in the Caribbean. It took 31 days for the funds to reach the recipient bank. It also took considerable staff time, both on our part and that of the Caribbean law firm, to track down the funds which where inexplicably hung up in a New York Bank. We wrote-off most of the lost interest.

Whichever means you select to send funds, your client should be warned that funds being sent may not arrive as quickly as one may like and that there may be interest consequences which may be the client's responsibility. Advising clients of interest consequences in the event of delay in transportin funds within Manitoba is also advisable. A client recently complained to the Law Society when bac weather conditions delayed the progress of a purchase money cheque between a northern Manitoba community and Winnipeg. Transportation delays meant the cheque arrived later than expected, which had unanticipated interest consequences to the client.

To protect yourself when sending funds, advise your client that unforeseen delays may result in additional costs for which they may not be compensated. Follow-up immediately to ensure that monies have arrived and have been properly dealt with. Don't wait for confirmation. If you would like to discuss setting up appropriate systems to allow for wire transfers, contact one of the Law Society's auditors at 942-5571. And the next time we have to send money to the Caribbean, we'll b sending Ryan Sasaki on a plane, with a briefcase full of cash....

Bar Admission Development Project Underway

Sheila Redel
Director of Bar Admission Development Project

The Alberta / Saskatchewan / Manitoba Bar Admission Development Project has now completed si months of its two-year mandate, and is well on track for the new course's target implementation da of mid-2004. Funding for the project has been provided through the Alberta Law Foundation, The Law Society of Manitoba, The Saskatchewan Law Foundation and The Law Society of Saskatchewan.

The first phase of the project has focussed on research into what new lawyers really do in their practice. An extensive three-province survey and young practitioner focus groups have shown that some of the assumptions we've made over the years have changed as the nature of practice has evolved. For example, our research shows that, although many young lawyers classify themselves a civil litigators, they actually spend much more of their time initiating actions and negotiating settlements than they do in the courtroom.

The new course will be primarily skills based, and will follow the competency profile adopted by tl benchers of Saskatchewan, Alberta and Manitoba late last year. Rather than the traditional lecture-based approach, a portion of the course will be delivered online, and other educational technologies will assist in reducing the amount of time students will be spending in the classroom.

The next phase of the project will be to design the curriculum for the new course. The challenge wi be to use technology effectively to place course activities in a realistic practice environment. The plan is to use 'virtual' clients to provide the student with the sorts of messy real life problems that often arise in a typical practice.

If you have any comments or questions about the new bar admission course, contact the project director, Sheila Redel at sredel@lawsociety.mb.ca. or by telephone at (204)926-2020.

Dealing with Inactive Trust Accounts

Marilyn Billinkoff
Deputy Chief Executive Officer

Law society auditors have noticed that an increasing number of members continue to hold money i their trust accounts for clients whose matters have been completed. Chapter 8 of the Code of Professional Conduct provides that members should not retain trust money for an unnecessarily lon period without the express consent of their client. Practically speaking, these balances add time to t firm's monthly bookkeeping procedures and when funds remain in trust for a number of years ofte make it difficult for the lawyer to locate the clients or third parties to whom the funds are owed. When a member retires from practice or a firm dissolves, dealing with numerous inactive trust accounts adds to the burden of winding up the practice.

Members should therefore remember that:

- A file should not be closed until all trust money has been appropriately disbursed;
- It is good practice to review all accounts not having any trust activity on a periodic basis, and at least annually (a list of these accounts must now be included with the annual trust account report);
- If any inactive balances relate to matters that have been completed, the money should be appropriately disbursed. The funds should be returned to the client or, if the funds represent fees and/or disbursements, the client should be billed and the money transferred to the firm's general account. Funds belonging to the firm should not be kept in trust;
- Care should be taken to make sure that trust funds are dealt with when a lawyer leaves a firm or a firm winds up its practice. In the absence of an agreement between the departing lawyer and the firm as to who will assume responsibility for notifying clients about their files and related trust funds, both the departing lawyer and the law firm must provide the notification. Practice Direction 90-02 provides further guidance on this issue.

What if the client can't be located?

Section 51 of The Legal Profession Act provides a final alternative for dealing with money held in trust for more than 3 years by permitting the member to pay the funds to the Society if:

a. the money is not attributed to any person in the member's records; or
b. the money is attributed to one or more persons, but all reasonable attempts to locate the persons have failed.

In making efforts to locate a client, members should write to the client at his or her last known address and failing receipt of any response attempt to locate the client through other means such as motor vehicle searches, checking residential directories, internet searches, etc. If all efforts to locat a client fail, the money may be sent to the society, together with a covering letter which includes th following information:

- the name of the client (if available);
- the amount submitted for that client;
- the reason the money is being submitted; and
- a brief summary of the efforts taken to locate the client.

Members holding a nominal amount of money in trust (for example, balances of under $3.00 per client) should contact a Law Society auditor for advice on how to disburse the funds.

Space Sharing Revisiting: Liability, Trust Accounts and Conflict

Tana Christianson
Director of Insurance

Many lawyers practise outside of conventional law firm partnership arrangements. The definition o firm in the new Rules enacted October 31, 2002 recognizes this new reality. Under the Rules, firm includes one member or two or more members practising together and may include a sole proprietorship, a law corporation, a partnership or association of members or law corporations or a combination of both. But, arrangements where members share office space and certain common expenses, but otherwise practise as independent practitioners are not considered firms. Lawyers wh are sole practitioners (including those who practise through law corporations) may share office spa with other sole practitioners, with a group of associated lawyers or even with non-lawyers. Lawyer may practise in arrangements that vary from a relatively casual relationship among lawyers who maintain separate trust accounts, separate letterhead, separate signage and have only an address an photocopier in common, to associations that appear for all intents and purposes as a traditional law firm with common letterhead, one sign on the door, shared support staff, and an agreement betwee the lawyers that they will not act for any parties adverse in interest. In the latter case, to the general public, nothing distinguishes the "firm" from a traditional law partnership.

There are many reasons lawyers may choose to practice in alternative arrangements beyond an unwillingness to make a commitment. There may be certain economies for sole practitioners settin up under one roof, including maximizing any benefit of practising through a law corporation. However, before you choose to practise in such an arrangement, there are certain things you should consider.

If the only thing that you want to share is space and not to be viewed as a firm, it is an excellent ide to advise your clients, in writing, that you are in an arrangement for sharing space only. You shoul also advise that the other lawyers in the space-share (whom you should list) are free to act for other who are adverse in interest to your client.

You will need to take steps to make sure that, while space is shared, information isn't. You should institute a strict procedure so that no written communication (including mail, fax, courier package) opened or capable of being read by anyone except your employees. This means you will need to ha your own fax machine and fax number and that you should have a computer network separate from the other individuals sharing the office. All of your legal files must be kept in secure cabinets. Files cannot be left lying on desks or credenzas, and file cabinets. Offices and work areas where client material is stored should be locked when you or your employees are not present.

All the employees in the office-sharing arrangement (including those employed by non-lawyers) should be briefed on lawyers' professional responsibilities to maintain confidentiality. Your employees must know that they cannot discuss clients' matters with non-employees. You may ever want to have your employees sign a confidentiality agreement. If you are sharing a receptionist, tak

the time to make sure that the shared receptionist understands the importance of guarding client confidentiality.

It is also important that telephone conversations be kept confidential. Particular care is required wh a call takes place in a shared area (such as a secretarial station) or if the walls in your individual office are thin.

Notifying your client at the outset of the retainer of the nature of the space-sharing agreement may make it less likely that you will be named as a party to a professional liability claim against one of your fellow space sharers or, in any event, should make it easier to get the claim against you discontinued.

You may well find yourself named as a party in litigation. Space-sharers are often shocked and dismayed to see themselves named as co-defendants in a professional liability negligence suit. Whe a lawyer practises in a conventional partnership, it is unusual for the lawyer to be named individually; generally, only the partnership is named. Since it can be difficult to determine the relationship between lawyers in a space-share, it is extremely likely that all the lawyers practising i an association or space-share will be named in any litigation.

Whether you will be held vicariously liable for the negligent actions of the people next door may b a function of whether there was any holding-out or ostensible partnership upon which the client placed reliance. If you want to remain separate for liability purposes, you have to take the necessar steps, including practising under a separate name with a separate telephone number, letterhead, website and all the other indicia, to convince the Court that you really are a sole practitioner and no a member of a "firm".

The Policy of Insurance covering lawyers in Manitoba defines a law firm as "two or more individuals who are, or appear to be, holding themselves out to the public as practising law togethe whether or not a partnership exists in fact and regardless of the form or forms of business organization through which the practice is conducted." In the end, the space-sharing lawyer will be covered for the vicarious liability claim brought against him or her as a result of the actions of the negligent space-sharer, but there may be potential deductible consequences, in addition to the gene trauma of being named as a defendant in litigation.

Another concern should be conflicts of interest. Sole practitioners practising in a shared-space situation may not realize until well into a matter that a fellow tenant acts for a party adverse in interest. The Courts show little reluctance to remove a lawyer from a file when another with whom he or she shares space - even in the most casual of arrangements - has previously been involved in the matter or has acted for one of the other parties. Lawyers in space-sharing arrangements, for reasons of client confidentiality, cannot share with their fellow space-sharers information that woul flag a potential conflict of interest. However, the space-sharers might be held liable for the damage that results to client or third parties from that conflict, or at the very least, be placed in a situation where they are removed from a file by the Court because of the conflict of interest. Even the precautionary measure of advising your client that your co-tenant may act for adverse parties may not prevent your removal for the perception of conflict. However, in a space-share "firm" operating as a firm with a common name, letterhead, etc., the authority of the client to divulge the informatio to other members of that firm is implied [Chapter 4(9) of the Code of Professional Conduct], thus allowing for conflict searches.

Another serious consideration for those in a space share are trust accounting rules.

Law Society Rule 5-43(2) requires a sole practitioner in a space sharing arrangement to maintain hi or her own trust account and not deposit trust money into a trust account maintained by any other member or law firm. In other words, lawyers are not permitted to share trust accounts when they ar not members of the same firm.

This Rule was adopted in September 1999 after the Practice and Ethics Committee reviewed the issue of alternative practice arrangements. The Committee acknowledged that in order to facilitate members in the practice of law, alternative practice arrangements such as space sharing, ought to b allowed. The Committee accepted that there might be a perceived benefit for members who practis in association with a group of lawyers. Nonetheless, the Committee also recognized that allowing sole practitioners to share trust accounts increases the risk for errors and misappropriation and caus considerable confusion to the profession and to the public. The Committee was satisfied that a sole practitioner should not deposit trust monies into a trust account over which he or she has no signing authority. By doing so, the member does not have access and control over his or her clients' funds. The Committee also felt that sharing a trust account effectively places clients at jeopardy for misapplications or misappropriations of trust funds by a lawyer with whom the client might not hav any solicitor-client relationship.

The Law Society is not concerned about which vehicle you select to carry on your practice, but we do ask that you make a conscious decision on the subject. Are you a member of a firm? Or are you sole practitioner who merely has a common address with other lawyers? If you choose to practise with other lawyers in a relationship that is something less than a full conventional partnership, you can have common letterhead, common signage and support staff who work for the whole "firm". W highly recommend that in such an arrangement, you set up a conflict of interest search system to avoid "firm" members acting for parties who are directly adverse in interest.

If you intend to maintain a totally independent practice, list only yourself on your letterhead. Put up sign in the reception area and on your office door that indicates that it is your law office. Maintain separate phone lines, answered in such a way as to refute any connection, keep your clients' names and information to yourself, and be sure to communicate the nature of your independent practice situation to your clients.

You can carry on practice in any format you choose, provided you take care to ensure that the manner in which you present yourself to the public, your clients, and other lawyers, reflects the reality of the arrangements you have made.

Notice of Benchers' Meeting

The next meeting of the Benchers of the Law Society of Manitoba will be held on **Thursday, February 6, 2003 at 12:30 p.m.** in the Society's classroom, 219 Kennedy Street, Winnipeg, Manitoba. Members of the Society are encouraged to attend and participate in the deliberations of t governing body.

Interest on Trust Funds Held for Out of Province Clients

Sherri Jack
Director of Audit

The increased mobility of the legal profession in recent years means that lawyers in Manitoba are acting for more clients from other Canadian jurisdictions. When a firm holds trust monies on behal of clients from other jurisdictions in it's Manitoba pooled trust account, the interest earned on the funds must be remitted to the Manitoba Law Foundation pursuant to Section 50(2) of The Legal Profession Act. Members should not send the interest to the Law Foundation in the clients' home jurisdiction. The one exception to this is when the member opens a specific trust investment accour for the benefit of one client. In that situation the interest should be paid directly to that client.

Interest on Unpaid Fees

Rule 5-57 of the Rules of the Law Society provides that a lawyer is entitled to charge interest on unpaid fees, charges or disbursements where the lawyer and client have so agreed. This interest is calculated from a date that is at least one month after the date the bill is delivered to the client.

The rate of interest that may be charged must not exceed the rate established under Section 161 of the Income Tax Act (Canada) on the day the bill is delivered to the client. The interest rate effectiv for the period January 1, 2003 to March 31, 2003 is 7%.

Click here for a list of historical interest rates.

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